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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules Concerning Maritime Communications	)))	PR Docket No. 92-257 RM-7956 RM-8031

REPLY COMMENTS OF
AMERICAN COMMERCIAL BARGE LINE COMPANY
AND
WATERWAY COMMUNICATIONS SYSTEM, INC.

American Commercial Barge Line Company ("ACBL") and Waterway Communications System, Inc. ("WATERCOM"), by their attorneys, respectfully submit their Reply Comments in the rulemaking and inquiry concerning maritime telecommunications services.

In general, the Comments of the maritime user community in this proceeding are consistent with Comments filed by ACBL and WATERCOM on June 1, 1993. In this Reply, ACBL and WATERCOM address the Comments of WJG Maritel, Phonic Ear, Inc., Ross Engineering, Global Maritime Communications Systems, SEA, Inc., and the land mobile interests.

In discussing the Commission's proposal to accord non-dominant status on maritime carriers, WJG makes false charges concerning WATERCOM. Those charges were considered by the Commission and rejected within the context of a protest by WJG against renewal of WATERCOM's system license

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authority.[1] Accordingly, WJG's baseless and false accusations are entitled to no weight in this proceeding.

WJG recognizes that a "market power" test is the appropriate test for determination of the application of non-dominant carrier regulatory protocols. Apparently, however, WJG does not understand the market power analytical paradigm adopted by the commission in the Domestic Common Carrier Proceeding.[2] Without any recognition of the contradiction in its argument, WJG suggests, within the same paragraph of its Comments, that the market power test should be applied both "to the market by type vessel served," and also "to carriers within each market served."[3] The test applied by the Commission is whether the service is subject to market competition; and in this context, the Commission has recognized that short-range maritime telecommunication service is highly competitive among VHF public coast, cellular, AMTS and satellite services.[4] Accordingly, WJG's

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1/ Waterway Communications System, Inc., 8 FCC Rcd. 3572 (1993).

2/ Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor (CC Docket No. 79-252), 95 F.C.C.2d 554 (1983), and related proceedings.

3/ WJG Comments at p. 16.

4/ Petition of Riverphone, Inc., 2 FCC Rcd 239, 240 (1987).

unsupported allegations and rambling arguments have no relevance to the issue of non-dominant carrier status.

Ross and Global, in identical comments, both endorse allowing private carriers to provide third-party, for-profit service. SEA also endorses private carriage, citing to the land mobile SMR experience. None of these parties identify how allowing private carriers to render service will enhance maritime communications service. Whether for-hire communications services is rendered by a "private" or a common carrier has no relevance to operational efficiency or improvement in service. If relaxation of regulatory requirements on common carriers is the source of improved efficiencies, the Commission should relieve public coast station operators of those regulatory requirements, rather than creating new competition with built-in advantages. The SMR experience, cited by SEA, has been successful because SMRs were available to meet growing land mobile service requirements; and if SMRs had not been available, cellular and "RCCs" would have been available to satisfy the demand. The key factors were market growth and channel availability, not regulatory status.

Phonic Ear has suggested in Comments filed in this rulemaking that the maritime allocation at 216-217 MHz should be deleted and that alternative uses should be considered for the 216-217 band. In the IVDS rulemaking, WATERCOM urged the Commission to decline, or at least limit, the proposed reallocation of 218-219 MHz to the IVDS on the basis that the service concept was ill-defined and, to the extent that interactive video functions would develop in the marketplace, that such demand would be met through cable or telephone services, given the substantially greater capacity and lower implementation costs. Since completion of the IVDS rulemaking, the communications industry has been awash in plans, partnerships and investments in the development of interactive media via cable and via telephone lines. Five hundred (500) channel cable systems, with interactive capability, will relegate IVDS to footnote status when the history of interactive television service is written. Indeed, in the 1-1/2 years since the Commission's adoption of its Report and Order in Gen. Docket No. 91-2, TV Answer has virtually disappeared from visibility. WATERCOM urges the Commission to retain the primary maritime allocation for the 216-217 MHz band, subject to secondary use as discussed in WATERCOM's Comments of June 1, 1993, pending the likely reclamation of the 218-219 MHz band for maritime use in accordance with the previously recognized needs.

With regard to land mobile sharing, three (3) parties, other than the proponent of the land mobile sharing concept, submitted Comments seeking to expand eligibility for the proposed land mobile sharing of maritime spectrum.[5/]

The Forestry-Conservation Communications Association (FCCA) recognizes that land mobile must operate on a secondary basis to maritime. FCCA also recognizes that the standards proposed by the Commission for protection of the maritime service against harmful interference are insufficient,[6/] and FCCA proposes a more effective standard.[7/] These Comments of FCCA are consistent with the views of ACBL and WATERCOM.

APCO recognizes that any permitted land mobile use

> must be consistent with the rules eventually adopted in the Commission's "spectrum refarming" proceeding (PR Docket 92-235). The new equipment and

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5/ Additionally, the Association of American Railroads

> technology specifications to be adopted in that proceeding must apply to the shared Maritime channels. Therefore, APCO urges that the effective date of the proposed sharing of Maritime channels be held in abeyance until such time as new Private Land Mobile Radio Service rules are also in effect.[8/]

APCO's recognition of the import of the land mobile refarming rulemaking to this proposal belies any implication that there is a land mobile spectrum crisis requiring solution by immediate access to 9 maritime channel pairs at locations removed from the coastal zones and waterways. On the other hand, APCO's suggestion of alignment of land mobile sharing of maritime channels with the land mobile rules evidences the fragile nature of the sharing proposal. As demonstrated in the Comments of ACBL/WATERCOM and other parties to this rulemaking, it is necessary that any land mobile sharing be aligned with the maritime frequency channelization and usage plan in order to minimize the interference potential.[9/] The foregoing complications, together with the _de minimis_ benefits to the land mobile user community, demonstrate that the land mobile sharing proposal is NOT about meeting land mobile frequency requirements. Indeed, other than vague and undocumented

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8/ APCO at p. 3.

9/ This alignment must also take into account, and follow, any narrowbanding of maritime channels.

references to land mobile needs, there is no demonstration of need and anticipated benefit from providing land mobile sharing of maritime frequencies. Nor is there any analysis of the degree to which land mobile needs have been satisfied by Commission action such as the recent implementation of land mobile use of 200 channels at 220-222 MHz, or the potential improvement in land mobile spectrum efficiency by a factor of 300-500% as contemplated by the Commission in the refarming rulemaking, PR Docket No. 92-235. Rather, it appears that the land mobile sharing proposal is nothing more than a "beauty contest" for the proponent land mobile user organizations to be able to claim credit for securing spectrum for their constituent interests, regardless of the illusory nature of the actual opportunity for beneficial use. This proposal should be withdrawn by the Commission or, at the most, implemented on a locale-specific basis for the four (4) metropolitan areas removed from maritime operating areas[10/] where potential land mobile spectrum shortage has been identified.

WHEREFORE, THE PREMISES CONSIDERED, American Commercial Barge Line Company and Waterway Communications System, Inc. respectfully urge the Federal Communications Commission to

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10/ Atlanta, Dallas, Denver and Phoenix.

act in this rulemaking in accordance with their Comments of June 1, 1993 and the foregoing Reply Comments.

Martin W. Bercovici
KELLER AND HECKMAN
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
202-434-4144

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